IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4890 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BATUKSING RANCHHODJI JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR KALPESH N SHASTRI for Petitioner

Mr.Bhatt, Assistant GOVERNMENT PLEADER, for Respondent No. 1

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/06/2001

ORAL JUDGEMENT

1. The petitioner, by this petition, has challenged the action of the respondents. He has prayed for the benefit of status of regular employee, since, according to the petitioner, he has completed more than 10 years' service as a daily wager (Rojamdar).

2. At the time of hearing of this petition, the petitioner has submitted that he is not invoking the provisions of the Industrial Disputes Act in any manner and this petition may be treated as a service matter.

Mr.Bhatt, learned AGP for the respondent, has no objection, as, even according to Mr.Bhatt, no provisions of the Industrial Disputes Act are pleaded and that even on the earlier occasion, the petition was taken by the concerned Judge taking Service matters.

3. The grievance of the petitioner is that since 1988, he is serving as a daily wager (Rojamdar) and started his service since 23rd April, 1998. It is stated in the petition that he is working uninterruptedly in the Department of Irrigation and that, as per the Government Resolution dated 17.10.1988, his services are required to be regularised and that he should be continued in service.

The petitioner subsequently amended the petition, by which he has also challenged the oral termination of his service with effect from 26.2.2000.

4. The petitioner had also earlier filed Special Civil Application No.6722 of 1977. This Court, by its order dated 1.4.1998, came to the conclusion that there was no foundation for apprehension of any other action on the part of the authority which may warrant the grant of any relief in favour of the petitioner that their services cannot be terminated on any ground whatsoever. This Court noted the argument of learned AGP that a daily rated workman cannot claim immunity from retrenchment provided there is a valid retrenchment. However, the Court found that it was only a statement of law. Ultimately, it seems that the said petition was not entertained on merits and the question whether the petitioner has completed 10 years of continuous service in terms of the requirement of the said Resolution dated 17.10.1988 was again a question which was required to be determined on the basis of material that the State Government may be under an obligation to consider before making the person permanent on the basis of the said Resolution. The Court found that, therefore, the question about apprehended termination of service or retrenchment would be premature at that stage. Under these circumstances, with certain clarifications, the said matter was dismissed by this Court. According to the petitioner, on the very next day, the petitioner was not provided any work and, therefore, this second Special Civil Application was filed.

5. The State Government has filed an affidavit-in-reply in this petition, wherein it is stated that as per the Resolution of the Government dated 17.10.1988, which is passed in consonance with the

provisions of the Industrial Disputes Act, 1947, a workman who has completed more than five years, but less than 10 years of service will be paid fixed salary of Rs.750/-. It is pointed out that the petitioner did not complete 240 days of service in the first year and he is not entitled to get the benefits of Rojamdar. It is also stated that there is also a complete Ban on recruitment of skilled Rojamdar and, therefore, the petitioner could not be continued as Rojamdar after 1988. It is also stated in the reply that the petitioner is not a permanent Rojamdar and that the Section Officer, still, continued him after 1.10.1988.

It is also stated in paragraph 5 of the reply that the petitioner is a workman, and whenever any work is available, he can be engaged and that the benefits of the Resolution dated 17.10.1988 cannot be extended to the petitioner. It is also further stated that in spite of the ban, the Section Officer continued the petitioner even after 17.10.1988, for which show cause notice was issued to the Section Officer. It is specifically mentioned in the said paragraph that as and when the work is available, the petitioner can be given work if he comes at the place of site and at the time of such work. It is stated that such casual work given to the person is recorded in the Muster Roll to show their attendance and after accounting their attendance, the salary is paid considering the working days.

6. It is required to be noted that, initially, the petitioner was given the work as a Rojamdar as back as in the year 1988 and he seems to have been continued from time to time. However, there is some dispute about the completion of days in a particular year. Therefore, at this stage, it is not possible for this Court to give any positive finding whether the petitioner is entitled to the benefit of the Resolution dated 17.l0.1988 or not. However, considering the affidavit-in-reply of the Department and considering the fact that as back as in 1988, the petitioner was given the work as a Rojamdar for the first time, I direct the respondents to give such benefit of a Rojamdar / Daily wager, and, for that purpose, even if there may be some intervening breaks, his seniority may be considered for giving such daily rated work considering the fact that he is doing this work since 1988. As stated earlier, the petitioner may be provided with work if the work is available since the petitioner has first entered for such work as back as in 1988.

7. Now, so far as the question of giving benefit of

the Resolution dated 17.10.1988 is concerned, there is a dispute between the parties about the completion of days, etc. Therefore, instead of giving any direction, the petitioner may submit a representation to the respondent, with all necessary particulars about his record. The respondent, therafter, on receiving the representation, will decide the said question and will find out the total number of days' service the petitioner has put in and for that purpose, even the Muster Roll, if it is available, may be taken into consideration. After receiving the representation from the petitioner, the concerned authority may take such decision whether the petitioner is entitled to such benefit by giving a positive finding about the total number of days and for that purpose, whatever evidence the petitioner may produce may be taken into consideration. If the petitioner is having any documentary evidence, like pay slip, etc., it would be open for him to rely upon the said documentary evidence at the time of making representation to the authority. After receiving such representation, the authority may decide the same and may also consider whatever evidence the applicant has relied upon in his representation. The authority may also consider whether any junior to the petitioner was appointed and whether he was continued or not. On the basis of the available material, therafter, appropriate decision may be taken whether the petitioner is entitled to the benefit of the G.R. or not, or whether any benefit of regularization can be made available to the petitioner or not. Decision in this respect may be taken within two months from the date of receipt of the representation from the petitioner. It is needless to state that such representation may be taken into consideration according to the Rules and Regulations. However, considering the fact that since considerable time the petitioner was allowed to serve as Rojamdar, the Department may take just and proper decision in this behalf. It is needless to say that in case the question regarding regularization of the petitioner's services is decided against him, it would be open for him to challenge the same in accordance with law before the appropriate forum. It is clarified that this Court has not expressed any opinion on the merits of the case whether the petitioner is entitled to the benefit of the G.R. or not as it is for the authority to decide the same on the basis of the available evidence.

This petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

19th June, 2001 (P.B. Majmudar, J.)

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(apj)